

NOT FOR PUBLICATION

NO. 25155

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

MARY PACHECO, Claimant-Appellant, v.
STATE OF HAWAII, DEPARTMENT OF HEALTH,
Employer-Appellee, Self-Insured

APPEAL FROM THE LABOR
AND INDUSTRIAL RELATIONS APPEALS BOARD
(Case No. AB 2000-291(H)
(1-99-10064))

SUMMARY DISPOSITION ORDER

(By: Burns, C.J., Lim and Foley, JJ.)

In this workers' compensation case, Claimant-Appellant Mary Pacheco (Pacheco), *pro se* on appeal and below, appeals the May 16, 2002 decision and order of the Labor and Industrial Relations Appeals Board (the Board), that affirmed the July 24, 2000 decision of the Director of Labor and Industrial Relations (the Director). In relevant part, the Director's decision denied the temporary total disability (TTD) benefits Pacheco claimed, for the March 18, 1999 stress injury arising out of her employment with self-insured Employer-Appellee State of Hawaii, Department of Health (the Employer).

After a sedulous review of the record and the briefs submitted by the parties, and giving due consideration to the arguments advanced and the issues raised by the parties, we resolve Pacheco's points of error as follows:

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1. In essence, Pacheco contends on appeal that the Board erred in concluding that "no disability resulted from the March 18, 1999 work injury." We disagree. In so concluding, the Board stated that "we credit the opinions of Dr. Slomoff and Dr. Zicchittella" -- the Employer's experts -- "over the opinion of Dr. Festerling" -- Pacheco's expert -- "with respect to TTD." "It is well established that courts decline to consider the weight of the evidence to ascertain whether it weighs in favor of the administrative findings, or to review the agency's findings of fact by passing upon the credibility of witnesses or conflicts in testimony, especially the findings of an expert agency dealing with a specialized field. Therefore, we will not pass upon the doctors' relative credibility." Igawa v. Koa House Rest., 97 Hawai'i 402, 409-10, 38 P.3d 570, 577-78 (2001) (footnote, citation and block quote format omitted). Accord, Nakamura v. State, 98 Hawai'i 263, 268, 47 P.3d 730, 735 (2002); Tamashiro v. Control Specialist, Inc., 97 Hawai'i 86, 92, 34 P.3d 16, 22 (2001). Further, the opinions of Dr. Slomoff and Dr. Zicchittella alone, even without considering the other, consonant evidence that was before the Board, amounted to "substantial evidence" to support the Board's conclusion that "no disability resulted from the March 18, 1999 work injury"; and we are not "left with a definite and firm conviction that a mistake has been made." Hence, the Board's ultimate conclusion was not "clearly erroneous[.]" In re Doe, 95 Hawai'i 183, 190, 20 P.3d 616, 623

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(2001) (citation and internal quotation marks omitted). See also Nakamura, 98 Hawai'i at 267, 47 P.3d at 734.

2. Pacheco also assails a number of the Board's predicate findings of fact, but to no avail. The findings of fact attacked were all supported by "substantial evidence" and we are by no means "left with a definite and firm conviction that a mistake has been made." Hence, the subject findings of fact were not "clearly erroneous[.]" In re Doe, 95 Hawai'i at 190, 20 P.3d at 623 (citation and internal quotation marks omitted). See also Nakamura, 98 Hawai'i at 267, 47 P.3d at 734.

Therefore,

IT IS HEREBY ORDERED that the May 16, 2002 decision and order of the Board is affirmed.

DATED: Honolulu, Hawai'i, April 15, 2004.

On the briefs:

Chief Judge

Mary Pacheco, *pro se*
claimant-appellant.

Associate Judge

James E. Halvorson and
Steve K. Miyasaki, Deputy
Attorneys General, State of
Hawai'i, for employer-appellee.

Associate Judge